

<sup>1</sup> See K.S.A. 44-519.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

Claimant objects to the introduction of the medical records and reports respondent offered at Dr. Brown's and Dr. Dorey's depositions that pertain to claimant's treatment before the accidental injury that is the subject of this claim. Claimant does not object, however, to the doctors considering those records and does not object to either doctor's testimony concerning what those records contain or the opinions they formed based upon the records.<sup>2</sup> The Appeals Board agrees that opinions contained in records of other health care providers cannot be introduced through the testimony of a physician that had no part in their production.<sup>3</sup> Prior treatment records which were considered by a testifying physician in arriving at his or her opinion are admissible, but not to prove the validity or accuracy of the matters asserted therein. Instead, they are admissible to test the soundness of the opinion by the physician who assessed and utilized the record in arriving at his or her own opinions.<sup>4</sup>

The Board agrees with and adopts as its own the findings and conclusions stated by the ALJ in his Award. Claimant had suffered previous back injuries and had a preexisting condition to his low back. The parties agree that claimant suffered accidental injury arising out of and in the course of his employment with respondent. The issue concerns the permanency of that injury and whether there is any additional disability which is ratable as additional functional impairment under the fourth edition of the AMA Guides to the Evaluation of Permanent Impairment.<sup>5</sup> Claimant contends that Dr. Dorey's opinion that he has no additional permanent impairment is not credible, in light of the claimant's increased symptoms. Claimant presents in contravention, the 5 percent rating by Dr. Brown and argues that he is entitled to a 5 percent permanent partial disability award because this is the percentage of impairment that is new and does not include his preexisting impairment. Work disability is not an issue.

The Board, for the reasons stated in the Award, affirms the finding of no permanent disability.

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<sup>2</sup> See Roberts v. J.C. Penney Co., 263 Kan. 270, 949 P.2d 613 (1997); Boeing Military Airplane Co. v. Enloe, 13 Kan. App. 2d 128, 764 P.2d 462, *rev. denied* 244 Kan. 736 (1988).

<sup>3</sup> See, e.g., K.A.R. 51-3-5a.

<sup>4</sup> Compare Staggs v. Hunter Care Centers, Inc., WCAB Docket No. 210,500 (March 1999), where the parties stipulated to the foundation for the medical records, reserving only the K.S.A. 44-519 objection. There was no such stipulation in this case.

<sup>5</sup> See K.S.A. 1999 Supp. 44-501(c) and K.S.A. 1999 Supp. 44-510e(a).

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore, dated November 30, 1999, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Elizabeth L. Marietta, Salina, KS  
Roger E. McClellan, Wichita, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director